

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 22 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

CENTENNIAL STEVEDORING
SERVICES; et al.,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS; et al.,

Respondents.

No. 04-72224

BRB Nos. BRB No. 03-0289
BRB No. 03-0437
OWCP No. 18-75214
OWCP No. 18-75215

MEMORANDUM*

On Petition for Review of an Order of the
Benefits Review Board

Argued and Submitted December 9, 2005
Pasadena, California

Before: LEAVY, COWEN,** and RAWLINSON, Circuit Judges.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**The Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

1. Substantial evidence supports the Administrative Law Judge's (ALJ) finding that Claimant Cosmo Colaruotolo sustained an injury on February 19, 2001, while employed by Centennial Stevedoring Services, and that the February 19, 2001 injury aggravated, accelerated, or combined with his preexisting condition to at least partially create the ultimate disability. *See Metro. Stevedore Co. v. Crescent Wharf & Warehouse Co.*, 339 F.3d 1102, 1104-05 (9th Cir. 2003), *cert. denied*, 125 S. Ct. 309 (2004). Accordingly, the Benefits Review Board properly upheld the ALJ's determination that Centennial is the last responsible employer.

2. There was no abuse of discretion in denying Centennial's motion to reopen the evidentiary record. Centennial's new evidence of "collusion" on which the motion to reopen was based does not undermine the validity of the documentary and testimonial evidence on which the ALJ relied. *Cf. E.P. Paup Co. v. Director*, 999 F.2d 1341, 1347 n.1 (9th Cir. 1993) (recognizing the ALJ's broad discretion to correct *mistakes* in the record.). Neither does the new evidence establish that Claimant contravened the goals of the Longshore and Harbor Workers' Compensation Act. *See Keenan v. Director*, 392 F.3d 1041, 1043-44 (9th Cir. 2004).

The petition for review is **DENIED**.